

Memorandum



125.0020

10 : Mr. Wendell L. Walton

Date : August 30, 1977

From : Robert D. Milam

Subject: Certification of Appraisers Contracting
with County Assessors

You recently requested our opinion on the status of persons who contract with county assessors to appraise unique properties. You asked whether such persons were exempt from the certification, conflict of interest and financial disclosure portions of the Revenue and Taxation Code. Our conclusion is that those persons are not exempt from the provisions of the Revenue and Taxation Code dealing with certification, financial disclosure, and conflict of interest.

The courts have held that a contract between a county assessor and an independent appraisal firm to value all or a portion of the county was invalid because the assessor is required by statute to perform these duties. (Tax Factors, Inc. v. County of Marin, 20 Cal. App. 2d 79.) On the other hand, in at least one case, the courts have found that the assessor can hire an outside expert to value a specialized and unique property where it is doubtful the assessor could have the capability of performing this task. (County of Tuolumne v. State Board of Equalization, 206 Cal. App. 2d 352.) In order to resolve this seeming inconsistency we must analyze these cases from two standpoints: (1) the relationship between the assessor and the independent appraiser, and (2) the parties to each action.

The Tax Factors case stands for the proposition that the courts do not approve contracts where the assessor has agreed for someone else to perform his statutory duty of valuing property in the county. On the other hand, it is obvious he can employ persons to perform the appraisal function under his direction. The difference in these arrangements is the control the assessor exercises over the person doing the appraisal. In the Tax Factors case the agreement was that the company would value a portion of the county in their own manner, with the assessor having little or no control over the company. The assessor exercises a great deal of control over

employees he hires to do the same job and under these conditions cannot be said to agree that these employees should perform the duty imposed upon him by statute. This right of control is the same as the distinguishing feature between an employee and an independent contractor. I believe an analysis of the cases supports the proposition that an assessor may not hire an appraiser to provide any of the duties that by statute are the assessor's without the requisite degree of control. With this control in evidence, the person hired becomes an employee of the assessor for all purposes pertinent here.

The Tuolumne case does not illuminate this area very well because we are not certain what control the assessor exercised over the engineer he hired. Assuming the person was an independent contractor, the court placed much weight on the fact that the assessor adopted the outside appraiser's value. In this situation it is necessary to keep in mind the parties to the action in each of these cases. In Tax Factors the appraisal firm was suing the county for compensation under the contract, and, therefore, the parties to the action were also the parties to the contract. In the Tuolumne case, San Francisco County was suing Tuolumne County whereas the parties to the contract were the outside appraiser and the County of Tuolumne. The Tuolumne decision was in keeping with the general rule that a third party may not usually sue upon the validity of a contract between two other parties unless that third party is a beneficiary of the contract. Therefore, the Tuolumne case cannot be taken for the proposition that an agreement to hire an independent contractor by the county to perform one of the assessor's function was either valid or invalid.

With this analysis in mind, what should our position be in regard to these types of contracts? We should adopt a position that the assessor is statutorily incapable of hiring an independent contractor to perform any of his functions. Thus, any outside person hired becomes an employee and, as such, must be certified and file financial disclosure statements. If, in fact, an assessor claims the person hired is an independent contractor, we should take the position that the courts would find the relationship to be employer-employee. Independent contractor is a legal classification based upon the relationship between employer and worker, and in all of the statutes dealing with this area, the law presumes an employer-employee relationship. An intended independent contractor may be held to be an employee because of the nature of the job and its requirements. One factor that could determine the nature of this relationship is the presumption that the law is obeyed. If there is evidence of both an employer-employee relationship and an independent contractor-principal relationship, the

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determinative factor may turn on whether hiring an independent contractor would violate the law. If so, as it may be in the case of an assessor, the relationship may be determined to be that of employer-employee. It is not that assessors cannot contract for these services, but if they do contract the appraiser must be under the control of the assessor as to the means as well as the result of his work.

If assessors were able to contract with an independent contractor the following would result: (1) exemption from certification, training and financial disclosure requirements of Sections 670, 671, and 672; (2) exemption from the conflict of interest provision of Section 1365; and, (3) exemption from the requirements of the Political Reform Act of 1974 (Proposition 9). For assessors to engage persons under these conditions would be incompatible with the spirit of the Political Reform Act of 1974, an initiative by the electorate, and related Revenue and Taxation Code provisions. The trend of the times is toward disclosure and avoiding conflicts of interest. All public officials should perform their duties in an impartial manner free from bias caused by their own financial interest. Any assets or income which maybe materially affected by their official actions should be disclosed and in appropriate circumstances the official should be disqualified from acting in order that conflicts of interest may be avoided.

It probably would be a good idea to clarify the law by amending Sections 670 and 1365, to include all relationships between the employer and the worker. This could be accomplished very easily by the following:

670. (a) No person shall perform the duties or exercise the authority of an appraiser for property tax purposes ~~as an employee~~ of for the state, any county, or city and county

1365 (a) The county assessor and ~~the employees~~ of any other person employed by the assessor's office shall not

In adopting the position outlined in this memo, we can wait for amendment of the law until such time as a technical bill is introduced.

RDM:po

cc: A. F. Goldman
W. Senini
J. F. Eisenlauer
G. L. Mayer
Legal

Bob Wilson

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AUG 31 1977

Division of Assessment Standards
SACRAMENTO

Mr. Verne Walton

July 18, 1983

Mr. James M. Williams

Certification of Contractors

Your memo of June 16, 1983, seeks our views in the instance where the Assessor of Los Angeles County has retained an outside expert for a 2 1/2 year period. The question is whether or not this expert performs services that require certification by our Board as appraisers.

I don't want to beg the question but it does seem that your staff is best qualified to make this determination. There is no legal issue here for our interpretation. Your letter to Assessors of October 5, 1977 (No. 77/138) is directly on point. It was based on Bob Milam's memo of August 30, 1977, which provides the basic interpretation of Revenue and Taxation Code Section 670. In the interim nothing has changed either Bob's memo or the Letter to Assessors.

No. 77/138 states: The assessor may, however, arrange for an outside expert to value specialized properties when it is unreasonable to expect the permanent staff to possess the expertise to perform the task. In contrast Ms. McGowan, the Los Angeles County Training Coordinator, writes that Mr. Robertson does not make or sign appraisals. In her words he does field engineering, estimates reserves, produces decline curves, reviews operating costs and trains new personnel. In further contrast you noted in Mr. Pope's letter of April 2, 1982, to his Board of Supervisors that Mr. Robertson will be primarily responsible for the valuation of approximately 1800 oil related properties throughout the County. If necessary he would testify and defend these valuations before the appeals board.

In the contract of April 13, 1982, between the County and Mr. Robertson the latter's position is described as "an experienced appraisal engineer". Moreover, as you have again noted in the Services paragraph, he is required to assist in

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(1) the determination of fair market value of oil and gas mineral interests, (2) defend these determinations before the appeals board, and (3) provide a formal petroleum property appraisal training course for assessor personnel. This contract may not require Mr. Robertson to sign appraisals but it certainly does require him to assist in making them.

In my view Mr. Robertson should be certified, however, it is the view of your staff that should control. If you feel the need to go beyond written documents, it may be worth while to conduct an on-scene inspection of Mr. Robertson's actual work.

JMW:fr

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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Jerry Trueblood
Legal Section